

*In the*  
**UNITED STATES COURT OF APPEALS**  
**FOR THE THIRD CIRCUIT**

Prometheus Radio Project, Petitioner,	)	
	)	
v.	)	No.
	)	
Federal Communications Commission and United States of America,	)	
	)	
Respondents	)	

**PETITION FOR REVIEW**

Pursuant to 47 U.S.C. §402(a), 28 U.S.C. §§ 2342-2344, and Rule 15(a), Federal Rules of Appellate Procedure, the Prometheus Radio Project petitions the court for review of the Federal Communications Commission’s (“Commission”) Report and Order, *In the Matter of 2002 Biennial Regulatory Review*, FCC 03-127, MB Docket No. 02-277, MM Docket 01-235, MM Docket 01-317, MM Docket 00-244, and MB Docket 03-130, which was adopted June 2, 2003, and released July 2, 2003 (“*Order*”). A summary of the *Order* was published in the Federal Register on August 5, 2003, 68 Fed. Reg. 46286. A copy of the *Order* is attached to the *Motion for Stay Pending Judicial Review* being filed simultaneously with this *Petition for Review*.

This *Petition for Review* has been filed within ten days of the issuance of the agency order, and thus is subject to the procedures established under 28 U.S.C. §2112(a), should other qualified *Petitions for Review* be filed in different Courts of Appeals.

Venue in this Court is proper under 28 U.S.C. §2343 because the Petitioner has its principal office in Pennsylvania.

Petitioner is an unincorporated collective of radio activists which has been

committed to expanding opportunities for the public to build, operate and hear low power FM radio stations. This activity has included advocacy for rules and policies which promote diversely owned and operated broadcasting stations in the United States. Members of Prometheus assist in the creation of low power FM radio stations and regularly listen to commercial and non-commercial radio and television.

Under 5 USC § 706(2)(A), a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” The Commission’s *Order* is arbitrary and capricious in numerous respects. It also violates both the Communications Act and Administrative Procedure Act’s public notice requirements.

Petitioner respectfully requests that the Court reverse and remand the FCC’s *Order* to the extent that it unlawfully repeals the prior ownership rules and adopts new ownership regulations, reinstate the prior ownership rules, and grant all other relief as may be just and proper.

Respectfully submitted,

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August 13, 2003

## CERTIFICATE OF SERVICE

I certify that on this 13th day of August, 2003, I served copies of the foregoing *Petition for Review* by causing them to be delivered by U.S. mail and by email (as indicated) to the following:

John Rogovin  
General Counsel  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(By First Class Mail and Email)

John Ashcroft  
Attorney General of the United States  
United States Department of Justice  
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Andrew Jay Schwartzman